

REMARKS

Reconsideration of the pending application is respectfully requested on the basis of the following particulars.

1. In the specification

The specification is amended, as shown in the foregoing AMENDMENT TO THE SPECIFICATION, to provide a brief description of new drawing Figure 9 and to provide reference numerals for the previously described features of Figure 9. It is respectfully submitted that no new matter is added since the amendments merely provide further clarity with respect to previously described features.

Entry of the AMENDMENT TO THE SPECIFICATION is respectfully requested in the next Office communication.

2. In the drawings

A. New drawing sheet

New Figure 9 is presently added in the NEW SHEET of page 3 of the drawings. Specifically, the fabric of the package having a polymeric coating on the inside and outside surfaces is illustrated. Reference numeral 11 is added to identify the fabric. Reference numeral 13 is added to identify the polymeric coating. It is respectfully submitted that no new subject matter is introduced since new Figure 9 generically illustrates features described in the specification as originally filed at least in paragraph [0025].

Acceptance of the NEW SHEET is respectfully requested in the next Office communication.

B. Objection to the drawings

Reconsideration and removal of the objection to the drawings is respectfully requested.

The features of claim 2 that are identified as not being shown in the drawings have been canceled, thus rendering the objection moot.

New drawing Figure 9 illustrates the features recited in claims 9 and 20 of the exterior or interior surfaces being provided with a polymeric coating, thus every feature of claims 9 and 20 is shown in the drawings.

Accordingly, removal of the objection to the drawings is respectfully requested.

3. In the claims

As shown in the foregoing AMENDMENT TO THE CLAIMS, the claims have been amended to more clearly point out the subject matter for which protection is sought.

Claim 1 is amended to recite that the gusset portions have longitudinal and transverse folds, that the vent configurations are spaced from the transverse fold, and that the vent configurations open and close in response to changes in air thrust and are further closed off when the package is in a filled state. It is respectfully submitted that no new matter is added since support for the amendments is clearly found in Figs. 1 through 8 of the pending application and at least in paragraphs [0011], [0022], [0026], and [0028] of the accompanying description in the specification.

Claim 2 is amended to recite that the tube is a spiral sewn tube. It is respectfully submitted that no new matter is added, since the amendment merely cancels previously recited elements.

Claim 5 is canceled.

Claim 10 is amended to recite that the gusseted side panels have longitudinal and transverse folds, that the at least one opening is spaced from the transverse fold, and that the at least one opening is configured to open and close in response to changes in air thrust and is further closed off when the bag is in a filled state. It is respectfully submitted that no new matter is added since support for the amendments is clearly found in Figs. 1 through 8 of the pending application and at least in paragraphs [0011], [0022], [0026], and [0028] of the accompanying description in the specification.

Claim 13 is canceled.

Claim 15 is amended to recite that the gusseted side panels are each formed from longitudinal and transverse folds, that the plurality of openings is spaced from the transverse fold, and that the plurality of openings is configured to open and close in response to changes in air thrust and is further closed off when the packaging is in a filled state. It is respectfully submitted that no new matter is added since support for the amendments is clearly found in Figs. 1 through 8 of the pending application and at least in paragraphs [0011], [0022], [0026], and [0028] of the accompanying description in the specification.

Claim 18 is amended to recite that the plurality of openings are defined as slits arranged in a preselected pattern. It is respectfully submitted that no new matter is added since support for the amendments is clearly found in Figs. 1 through 8 of the pending application and at least in paragraphs [0027] and [0031] of the accompanying description in the specification.

Claims 3, 4, 6-9, 11, 12, 14, 16, 17, 19, and 20 are left unchanged.

Entry of the AMENDMENT TO THE CLAIMS is respectfully requested in the next Office communication.

4. Rejection of claims 1, 5, 6, 15, 16, 18, and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. patent no. 4,491,959 (*Loefberg*)

Reconsideration of this rejection is respectfully requested, in view of the amendments to claims 1 and 15, on the basis that the *Loefberg* patent fails to disclose each and every limitation of amended claims 1 and 15. The remaining claims depend from either claim 1 or 15, and are therefore patentable as containing all of the limitations of claims 1 or 15, as well as for their respective recited features. This rejection is rendered moot with respect to claim 5, due to the cancellation thereof.

The *Loefberg* patent fails to disclose openings or vent configurations located in the gusset fold spaced from the transverse fold of the gusset, wherein the openings

or vent configurations are configured to open and close in response to changes in air thrust, as required by amended claims 1 and 15.

The *Loefberg* patent discloses a web of plastic bags 2 having longitudinal gusset folds 3(a), 4(a), 5(a) (col. 2, lines 32-38). In order to provide the filled bags in a block shape, the gussets include diagonal first fold part seals 9, 10, 11, 12 (col. 2, lines 46-49). In order to provide venting, one or more circular perforations 14 are provided in the region bounded by the first fold part seals 9, 10, 11, 12, the inner gusset longitudinal fold edges 3, 3a and transverse fold lines 15, 15a (col. 2, lines 58-65).

In use, the circular perforations 14 allow constant two-way venting of the bag until the bag is in a filled state (col. 3, lines 36-38). In order for the circular perforations to be closed when the bag is in a filled state, the circular perforations must be located with the inner triangle part 27(a), 28(a) that is formed by the first fold part seals 9, 10, 11, 12, the inner gusset longitudinal fold edges 3, 3a and transverse fold lines 15, 15a (col. 3, lines 55-60).

The structure of the *Loefberg* patent is thus substantially different from the structure of amended claims 1 and 15. The circular perforations of the *Loefberg* patent allow for constant venting of the package. In contrast, amended claims 1 and 15 require vents or openings that are configured to open and close in response to changes in air thrust. Specifically, amended claim 18 requires that the vents or openings are slits arranged in a preselected pattern.

Therefore, the packaging of amended claims 1 and 15 is not being vented constantly, as is the bag of the *Loefberg* patent, but instead is only vented when an appropriate level of air thrust, or pressure, is built up within the package. Thus, the vents or openings of amended claims 1 and 15 reduce or eliminate the passage of gas or moisture into the packaging, while allowing the venting of excess air and moisture out of the packaging once a threshold pressure level is reached.

Further, the circular perforations of the *Loefberg* patent are specifically required to be located in a secondary triangular region formed by additional folds in

the gusset portions. This configuration is in contrast to the simpler configuration of amended claims 1 and 15, where the vents or openings are located directly within the gusset fold, spaced from the transverse fold, without being located in an additional triangular folded portion, as required by the *Loefberg* patent.

Accordingly, since the *Loefberg* patent fails to disclose or suggest openings or vent configurations located in the gusted fold spaced from the transverse fold of the gusset, wherein the openings or vent configurations are configured to open and close in response to changes in air thrust, as required by amended claims 1 and 15, withdrawal of this rejection is respectfully requested.

5. Rejection of claims 1, 3-7, and 15-19 under 35 U.S.C. § 102(b) as being anticipated by Great Britain patent specification no. 1,162,013 (*Union Carbide*)

Reconsideration of this rejection is respectfully requested, in view of the amendments to claims 1 and 15, on the basis that the *Union Carbide* patent fails to disclose each and every limitation of amended claims 1 and 15. The remaining claims depend from either claim 1 or 15, and are therefore patentable as containing all of the limitations of claims 1 or 15, as well as for their respective recited features. This rejection is rendered moot with respect to claim 5, due to the cancellation thereof.

The *Union Carbide* patent fails to disclose openings or vent configurations located in the gusted fold spaced from the transverse fold of the gusset, wherein the openings or vent configurations are configured to open and close in response to changes in air thrust and are closed off when the package is in a filled state, as required by amended claims 1 and 15. Further, while the *Union Carbide* patent discloses apertures that may be circular, oval, or elliptical, these shapes are not “slits” as required by claims 3, 4, 17, and 18. Instead, the apertures are shapes that are always open and thus always allow the passage of moisture and air.

The *Union Carbide* patent discloses a shipping bag 10 including longitudinal gusset portions 12, 12a (page 2, lines 46-52). The gusset portions have inner and outer longitudinal folds 14(a), 16(a) (page 2, lines 52-53). Each corner of the gussets

12, 12a is provided with a diagonal heat seal 20, 20a (page 2, lines 95-97). The diagonal heat seal 20 seals the opposing plies A and B to each other in the common area of overlap to form one side of the gusset 12 (page 2, lines 105-107). An opening or aperture 22, 22a is provided in the area defined by the diagonal heat seals, the bottom closure, and the side edge of the bag (page 3, lines 24-27). As the bag is filled, the material will expand the lower portion of the bag, as seen in Fig. 3, so as to allow air to communicate from inside the bag to outside the bag through the apertures 22, 22a, which are always in an open configuration due to the geometry of the disclosed shapes (page 3, lines 44-48 and 75-107). Due to the expansion of all parts of the bag when it is in a filled state, and the shape of the openings 22, 22a, the openings will be maintained in an open configuration when the bag is in a filled state, as shown in Fig. 3, since the openings 22, 22a are positioned on outside surfaces of the bag.

The structure of the *Union Carbide* patent is thus substantially different from the structure of amended claims 1 and 15. The circular, oval, round, elliptical, star-shaped, or triangular openings 22, 22a of the *Union Carbide* patent are not slits and therefore allow for constant venting of the package. In contrast, amended claims 1 and 15 require vents or openings that are configured to open and close in response to changes in air thrust.

Therefore, the packaging of amended claims 1 and 15 is not being vented constantly, as is the bag of the *Union Carbide* patent, but instead is only vented when an appropriate level of air thrust, or pressure, is built up within the package. Thus, the vents or openings of amended claims 1 and 15 reduce or eliminate the passage of gas or moisture into the packaging, while allowing the venting of excess air and moisture out of the packaging once a threshold pressure level is reached.

Further, the gussets 12, 12a of the *Union Carbide* patent are not formed by a transverse fold, as required by amended claims 1 and 15, but rather by a diagonal heat seal 20. Therefore, the apertures 22, 22a are not spaced from the transverse fold of the gussets. This configuration, as required by amended claims 1 and 15, allows the

vents or openings to be closed off when the package is in a filled state, as opposed to being constantly open to allow venting of the packaging.

Accordingly, since the *Union Carbide* patent fails to disclose or suggest openings or vent configurations located in the gusset fold spaced from the transverse fold of the gusset, wherein the openings or vent configurations are configured to open and close in response to changes in air thrust and are closed of when the package is in a filled state, as required by amended claims 1 and 15, withdrawal of this rejection is respectfully requested.

6. Rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over the *Loefberg* patent or the *Union Carbide* patent

Reconsideration of this rejection is respectfully requested, in view of the amendment to claim 2, on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to claim 2.

Amended claim 2 requires the package to be a spiral sewn tube. Neither the *Loefberg* nor the *Union Carbide* patents disclose a package that is a spiral sewn tube.

The *Loefberg* patent discloses a plastic bag, and the *Union Carbide* patent discloses a seemed or seamless tubular thermoplastic material. Thus, there is no disclosure of a spiral sewn tube.

Further, there is no suggestion, absent the applicant's own teaching, that would have motivated a skilled artisan to provide a spiral sewn tube for the package.

Accordingly, since the cited patents fail to disclose every element of amended claim 2, and because they further provide no suggestion that would have motivated a skilled artisan to modify the cited patents, a *prima facie* case of obviousness cannot be maintained, and withdrawal of this rejection is respectfully requested.

7. Rejection of claims 3, 4, 12, and 17 under 35 U.S.C. § 103(a) as being unpatentable over the *Loefberg* patent in combination with the *Union Carbide* patent

Reconsideration of this rejection is respectfully requested, in view of the amendments to claims 1, 10, and 15, from which claims 3, 4, 12, and 17 respectively depend, on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to amended claims 1, 10, and 15, and claims 3, 4, 12, and 17.

A. The cited references do not disclose or suggest every claimed limitation

Reconsideration of this rejection is respectfully requested on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to claims 3, 4, 12, 17 because the cited publications fail to disclose or suggest every limitation of claims 3, 4, 12, 17 and of amended claims 1, 10 and 15.

As discussed above individually with respect to the *Loefberg* and the *Union Carbide* patents, neither reference discloses vents or openings that area configured to open and close in response to changes in air thrust, as required by amended claims 1, 10 and 15. Further, neither the *Loefberg* nor the *Union Carbide* patents disclose vents or openings in the form of slits or slits that are obliquely oriented.

While it is true that the *Union Carbide* patent discloses oval or elliptically shaped openings, ovals and ellipses are not slits, as required by claims 3, 4, 12, 17. Accordingly, the circular openings of the *Loefberg* patent and the oval or elliptically shaped openings of the *Union Carbide* patent are always in an open configuration and thus do not open and close in response to changes in air thrust, as required by amended claims 1, 10, and 15.

Accordingly, since none of the cited references discloses every feature of claims 1, 3, 4, 10, 12, 15, and 17, withdrawal of this rejection is respectfully requested.

B. There is no motivation to combine the cited references

Reconsideration of this rejection is respectfully requested on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to claims 3, 4, 12, 17 because there is no suggestion or motivation to combine the cited patents.

The *Loefberg* patent discloses a bag having circular apertures that remain open until the bag is in a filled state. The circular apertures do not open and close in response to changes in air thrust, as required by amended claims 1, 10, and 15.

The *Union Carbide* patent discloses circular, oval, or elliptical shaped openings that are always maintained in an open position, even when the bag is in a filled state. Accordingly, a skilled artisan would not have been motivated to provide the openings of the *Union Carbide* patent to the bag of the *Loefburg* patent, since the openings of the *Union Carbide* patent are always maintained in an open position, and the openings of the *Loefburg* patent are closed off when the bag is in a filled state.

Thus, because a skilled artisan would not have been motivated to combine the cited publications, a *prima facie* case of obviousness cannot be maintained, and withdrawal of this rejection is respectfully requested.

C. There is no reasonable expectation of success

Reconsideration of this rejection is respectfully requested on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to claims 3, 4, 12, 17 because there is no reasonable expectation of successfully combining the cited patents.

Even if the *Loefberg* and the *Union Carbide* patents were combined, there is no reasonable expectation that the combination would successfully disclose the embodiments of amended claims 3, 4, 12, 17.

Since neither the *Loefberg* nor the *Union Carbide* patents disclose vents or openings that are slits, such that the vents or openings open and close in response to changes in air thrust, as required by amended claims 1, 10, and 15, even if the two patents were combined they would still not disclose every claimed feature.

Accordingly, withdrawal of this rejection is respectfully requested.

8. Rejection of claims 8-14 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the *Loefberg* patent or the *Union Carbide* patent

Reconsideration of this rejection is respectfully requested, in view of the amendments to claims 1, 10, and 15, on the basis that the rejection fails to establish a *prima facie* case of obviousness with respect to amended claims 1, 10 and 15, and claims 8, 9, 11, 12, 14, and 20. This rejection is rendered moot with respect to claim 13 by the cancellation thereof.

As discussed repeatedly above, neither the *Loefberg* nor the *Union Carbide* patents disclose every feature of amended claims 1, 10, and 15, from which claims 8, 9, 11, 12, 14, and 20 respectively depend. Therefore, the *Loefberg* and the *Union Carbide* patents necessarily fail to disclose every feature of claims 8, 9, 11, 12, 14, and 20.

Furthermore, the *Loefberg* and the *Union Carbide* patents fail to disclose a package being constructed of woven polyolefin fabric with a polymeric coating, as acknowledged in the rejection of September 27, 2006 on page 4, paragraph 8. While the rejection continues on and recites case law stating that it is within the general skill of a worker to select a known material on the basis of suitability for the intended use, the rejection provides no evidence that suggests that a woven polyolefin fabric with a polymeric coating would be suitable for the uses contemplated for the plastic bags of the *Loefberg* and the *Union Carbide* patents.

Accordingly, since none of the cited references disclose every feature of claims 8-12, 14, and 20, and there is no suggestion they would have motivated a skilled artisan to provide the missing features, a *prima facie* case of obviousness cannot be maintained, and withdrawal of this rejection is respectfully requested.

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9. Conclusion

As a result of the amendment to the claims, and further in view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that every pending claim in the present application be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the applicant's attorney, the examiner is invited to contact the undersigned at the numbers shown below.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. Cassell", written in a cursive style.

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